IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE SIXTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE Dr. JUSTICE G.YETHIRAJULU
WRIT PETITION NO : 16596 of 2004

Between:
Md.Arifuddin, S/o Late Md.Safiuddin,
T.No.699, Defence Metallurgical Laboratory,
Kanchanbag, Hyderabad

..... PETITIONER

AND

The Director, Defence Metallurgical Laboratory,
Kanchanbag, Hyderabad

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ or Order or direction more particularly one in the nature of Writ of Mandamus to set side the orders of suspension issued by the respondent vide No.DMRL/P/IND/699 dated 02-09-2004 by declaring it as illegal, arbitrary, violative Article 21 of the Constitution of India, not connected in discharging his official duties and against the law laid down by the Courts time and again and consequently direct the respondent to reinstate the petitioner in to service with all consequential benefits.

Counsel for the Petitioner:MR.K.R.SRINIVAS

Counsel for the Respondent .: Smt. E.URMILA DEVI (SC FOR CG)

The Court made the following :

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ORDER:

The petitioner is working as a Technician 'B' in the respondent Laboratory. A crime has been registered against him for the offences under Sections 498-A, 406 r/w Sec.34 I.P.C. and Sec. 4 and 6 of Dowry Prohibition Act, at the instance of his wife on 10-7-2004. The petitioner was arrested by the concerned police on 13-8-2004 and produced before the concerned Magistrate at 4-30 p.m. on the same day. But, he was directed to be produced before the Magistrate on the next working day. Since 14-8-2004 and 15-8-2004 were public holidays, he was produced before the concerned Magistrate on 16-8-2004, which happens to be the next working day and on the same day, he was granted bail.

The grievance of the petitioner is that the respondent on the ground that the petitioner was detained in jail for more than 48 hours, passed an order on 2-9-2004 keeping him under suspension with effect from 13-8-2004 as per Rule 10(2) of the CCA Rules.

The petitioner contends that the crime in which he was involved has nothing to do with his official functions and it was not committed while discharging his official duties. Therefore, he approached this Court through this Writ Petition, requesting to set aside the orders of suspension, dated 2-9-2004 by declaring the said order as illegal, arbitrary and violative of Article 21 of the Constitution of India.

The learned counsel for the petitioner drew the attention of this Court to a judgment of a Division Bench of this Court in ***P.Rajender***

Vs. Union of India [1]**,** The Division Bench while considering Rule 10(1) (b) of the Central Civil Services (Classification, Control and Appeal) Rules held;

> *" suspension cannot be ordered in a routine manner, simply because the rules enable the Authorities to pas the orders. Authorities have to consider the public interest and also the relevant facts and circumstances of the case - Suspension of an employee on the mere ground of filing of a case against him for the offences under Sections 494 and 498-A I.P.C., after the charge sheet has been filed without considering the question whether it has any impact on the employee, continuing in service is Illegal".*

The learned counsel for the petitioner also drew the attention of this Court to another judgment of a Single Judge of Allahabad High Court . In ***Jagjeet Singh Vs. State of U.P*** [2]**,** the learned Single Judge of Allhabad High Court held;

> *"Automatic deemed suspension on arrest of a Government Servant on a criminal charge and remaining in detention for more than 48 hours is ultra vires under Articles 14 and 21 of the Constitution of India".*

It was further observed that *a Government servant may not be able to get bail within 48hours of his arrest for reasons beyond his control and it may be due to no fault of his. Hence, keeping a Government Servant automatically under suspension because of his arrest for more than 48 hours is wholly arbitrary.*

In the present case, it is not as though he remained in jail on account of refusal of the bail by the concerned Court. The petitioner remained in jail due to intervention of two public holidays from the date

of his arrest till the date of his release. The application made by the petitioner for bail was considered by the concerned Court on the very same day and he was enlarged on bail.

In the light of the above legal position and in the light of the facts and circumstances explained by the petitioner and also in view of the fact that the offence alleged to have been committed by the petitioner has nothing to do with the discharge of his official duties, it is not desirable to continue him under suspension.

For the aforementioned reasons, the Writ Petition is allowed. The order of suspension shall be raised with immediate effect and the petitioner shall be allowed to resume duty subject to the result of the enquiry, if any, in connection with the alleged crime. No order as to costs.

Dr. G.Yethirajulu,J.

16th September, 2004.
KM

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To
1. The Director, Defence Metallurgical Laboratory,
   Kanchanbag, Hyderabad.
2. 2CD copies

THE HONOURABLE Dr. JUSTICE G.YETHIRAJULU

W.P.No. 16596 OF 2004

16th September, 2004

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[1] 2001(5) ALD 290 (DB)

[2] 1995(1)SLR